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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/943,395	08/30/2001	Kouhei Kabuki	1743/192	8228

7590

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EXAMINER

LAUCHMAN, LAYLA G

ART UNIT

PAPER NUMBER

2877

DATE MAILED: 05/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/943,395

Applicant(s)

KABUKI ET AL.

Examiner

L. G. Lauchman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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Specification

The disclosure is objected to because of the following informalities: The references to the claims should be deleted from the specifications. Appropriate correction is required.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: For example, p.11, line 10, "WI lamp" should be "MI lamp; line 21, "mirrors 8 and 9 " should be "mirrors 8 and 10", page 12, line 11 "mirror 7" should be "mirror 27", and etc . A drawing corrections or specification corrections are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Objections

Claims 4 and 5 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim 3. See MPEP § 608.01(n). Accordingly, the claims 4 and 5 not been further treated on the merits.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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The claims 1 and 2 are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document. Please clarify the last paragraph of claims 1 and 2, starting with "wherein the spectrophotometer is characterized in that..."

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Iwasaki et al (US 5,825,484) (The rejection over the prior is based on the interpretation of the claims).

The patent '484 teaches a spectrum-measuring device, comprising: a light source 1 for emitting an optical beam, a photodetector 3 that changes in sensitivity with changes in applied voltage, an analog-to-digital converter 5, a digital storage means for storage of said digital signals, a sensitivity control means 6 for controlling the sensitivity of the photodetector so that the signal values of said digital signals stay within a predetermined range (see col. 7, lines 29-40), a sensitivity correction data storage means, wherein sensitivity correction data is stored for each wavelength (see col. 6, lines 3-21).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Iwasaki et al (US 5,825,484), further in view of Tohyama et al (US 4,227,811).

The patent '484 teaches a spectrum-measuring device, comprising: a light source 1 for emitting an optical beam, a photodetector 3 that changes in sensitivity with changes in applied voltage, an analog-to-digital converter 5, a digital storage means for storage of said digital signals, a sensitivity control means 6 for controlling the sensitivity of the photodetector so that the signal values of said digital signals stay within a predetermined range (see col. 7, lines 29-40), a sensitivity correction data storage means, wherein sensitivity correction data is stored for each wavelength (see col. 6, lines 3-21).

The patent does not teach a beam splitting means for splitting the emitted beam.

The patent '811 to Tohyama et al discloses a double-beam spectrophotometer having with a beam splitting means 20, which splits the light emitted from a monochromator 12 into a sample beam and a reference beam. The patent also

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discloses a calculation means 58 (see Fig.2) for calculating the ration of the digital signals corresponding to the two beams (see col. 2, lines 52-69, col. 3, lines 1-65).

It would have been obvious to one skilled in the art to combine the double spectrophotometer of the patent '811 with the optical spectrum-measuring device of Iwasaki. The motivation for doing so would be preventing photodetectors from outputting erroneous signals since the application of sensitivity control means to the photodetector will allow the optical spectrum of the output beam from a light source to be measured with higher accuracy.

Conclusion

Papers related to this application may be submitted to Technology Center 2800 by facsimile transmission. Papers should be faxed to TC 2877 via the PTO Fax Center located in CP4-4C23. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The CP4 Fax Center number is (703)308-7722 or 308-7724.

If the Applicant wishes to send a Fax dealing with either a Proposed Amendment or for discussion for a phone interview then the fax should:

a) Contain either the statement "DRAFT" or "PROPOSED AMENDMENT" on the Fax Cover Sheet; and

b) Should be unsigned by the attorney or agent.


This will ensure that it will not be entered into the case and will be forwarded to the examiner as quickly as possible.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to L. G. Lauchman whose telephone number is (703) 305-0071.

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Any inquiry of a general nature or relating to the status of this application should be directed to the TC receptionist whose telephone number is (703) 308-0956.

L. G. Lauchman
Patent Examiner
Art Unit 2877
4/23/03/lgl



Frank G. Font
Supervisory Patent Examiner
AU 2877